

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5432 of 1996****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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PRINCIPAL - Petitioner(s)**Versus****ALPHANANSA FERNANDIS & 2 - Respondent(s)**

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Appearance :

MR HJ NANAVATI for Petitioner(s) : 1, MS LAXMI C NAINANI for
Petitioner(s) : 1,
MR VH DESAI for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
None for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 14/02/2007****ORAL JUDGMENT**

1. By way of this petition under Articles 226 & 227
of the Constitution of India, the petitioner
institution has challenged the legality and
validity of the judgment and order passed by the

Gujarat Primary Educational Tribunal dated 10th May, 1996 passed in application No. 157/94.

2. The facts leading to the present Special Civil Application in nutshell are as under :-

That the respondent teacher was having the requisite qualification of SSC and Montessori and it is the contention on behalf of the respondent that she was appointed as a primary teacher and working as such. Her services came to be terminated and the respondent teacher approached the Gujarat Primary Education Tribunal (hereinafter referred to as "the Tribunal") by way of application No. 157/94 challenging the said termination contending inter alia that before terminating her services, procedure as required to be followed under Section 40(B) of the Primary Education Act has not been complied with. It was the contention on behalf of the management that the respondent teacher was appointed in K.G. section and was never appointed in the primary section. It was

also submitted that assuming that and even if it is considered that the respondent was given some work in primary section, in that case, as the respondent teacher was not having requisite qualification of primary teacher, the procedure as required to be followed under Section 40(B) of the Primary Education Act was not required to be followed against which it was the contention on behalf of the respondent teacher that as she has worked for more than one year in the primary section, procedure as required under Section 40(B) was required to be followed. The tribunal accepted the contention on behalf of the respondent teacher and by judgment and order dated 10th May, 1996 allowed the said application and quashed and set aside the order passed by the petitioner management terminating the services of the respondent teacher by holding that before terminating the services and/or before dismissing the respondent teacher procedure as required under Section 40(B) of the Act has not been followed. Being aggrieved and dissatisfied with the judgment and order dated

10th May, 1996 passed in application No. 157/94 passed by the Gujarat Primary Education Tribunal, the petitioner management has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri H.J.Nanavati, learned advocate appearing for the petitioner has vehemently submitted that the tribunal has materially erred in holding that the respondent employee was serving in the primary section on permanent basis. It is submitted that in fact, the respondent employee was never appointed as a primary teacher in the primary section. In fact, subsequently, the respondent teacher applied in K.G. section and thereafter filed application before the tribunal. He has also further submitted that even otherwise, as held by the learned Single Judge of this Court in a judgment rendered in Special Civil Application No.2463/1997, if the appointment is without following any procedure and the teacher is not possessing the requisite

qualification of primary teacher, Section 40(B) of the Act would not be applicable. Therefore, it is requested to allow the present Special Civil Application and to quash and set aside the judgment and order passed by the tribunal.

4. Ms. Sutaria, learned advocate appearing for the respondents has submitted that as the respondent teacher has worked for more than one year, the procedure as required under Section 40(B) of the Act was required to be followed and as the said procedure was not followed, the tribunal has rightly quashed and set aside the order of dismissal and has rightly passed the order of reinstatement and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the respondent employee is not having a requisite qualification of primary teacher. Therefore, without entering

into the larger question as to whether the respondent teacher has subsequently applied in the K.G. section and thereafter an application was submitted before the tribunal and therefore, whether it is maintainable or not, assuming that the application submitted by the applicant was maintainable, in that case also, it is not on record as to whether before the appointment of the respondent No.1 in the primary section any procedure as required under the Act was followed. As stated above, the respondent employee was not having requisite qualification of a primary teacher. As held by the learned Single Judge of this Court in Special Civil Application No. 2463/1997, if the appointment is not in accordance with the statutory provisions, meaning thereby, any appointment made in contravention of the statutory provision must be held to be illegal and invalid and therefore, provision of Schedule – F of the Act would not be applicable. It is reported that the said decision has been confirmed by the Division Bench subsequently. In view of the decision of

the learned Single Judge in Special Civil Application No. 2463/1997 and considering the fact of the present case that the appointment of the respondent No.1 was not in accordance with the statutory provisions and that the respondent No.1 was not having requisite qualification of the primary teacher, the tribunal has materially erred in holding that the provision of Section 40(B) of the Primary Education Act would be applicable and thereby has materially erred in quashing and setting aside the order of dismissal.

7. For the reasons stated above, the petition succeeds. The judgment and order passed by the Gujarat Primary Education Tribunal dated 10th May, 1996 passed in application No. 157/1994 is hereby set aside. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

[M.R.Shah, J.]